IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9032 OF 2007

Shri Sambhaji Shamrao Moruskar ...Petitioners

Versus

The State of Mahrashtra and ors. ....Respondents

P.N.Joshi for the petitioners.

Ms.Manisha Sakharkar for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

11th December, 2007.

P.C. :

1. The petitioner before me has challenged an order passed on 31.10.2007 by which the State of Maharashtra has appointed the Commissioner of Nasik Municipal Corporation as Administrator on the Municipal School board.

2. The petitioner submits that Nasik Municipal School Board is constituted in accordance with the

provisions of the Bombay Primary Education Act and Rules made thereunder. The case of the petitioner is that Board consists of 13 elected member and two members to be nominated by the State. The elections were held in 2003 but the Board started functioning from 22.6.2004.

3. My attention is invited to the Act and Rules by Mr.Joshi and he submits that the election of the Municipal board was held in terms of the programme and results were declared. The school's Board constitution is incomplete, inasmuch, as two members have not been nominated by the state. In such circumstances, according to Mr.Joshi by virtue of the provisions of the Act and the Rules, the earlier Chairman continues until the new committee takes place.

4. However, all of a sudden and without prior notice a Desk Officer in the Department of Education, Government of Maharashtra addressed a letter to the Deputy Director, Nasik Division and stated that since the School Board could not be constituted within three months and that the functioning of the School Board is

not satisfactory, that it is necessary to hand over the affairs of the School Board to the Commissioner of Nasik Municipal Corporation.

5. The petition is filed aggrieved by this order and Mr.Joshi submits that, whatever may be the source of power to issue such direction, admittedly the basic requirement of hearing and enquiry after prior notice have not been satisfied and therefore the order is bad in law and is violative of the principles of natural justice, as also, of the Act and Rules.

6. This matter was placed today to enable Mr.Patne, Learned AGP to take instructions. Despite opportunity being given to the petitioner/respondent nos.1 and 2 to make submissions and also produce record, nothing has been produced. In these circumstances, the averments in the petition have not been controverted. There is some substance in the contention of Mr.Joshi, that if there were any complaints on record, the same could have been brought to the notice of the present petitioner or the Board as such and, in any event, the record could have been

produced for perusal of this court. Since neither has been done, there is a presumption that there are no such complaints on record. To my mind, if at all there were some complaints on record they could have been brought to the notice of the petitioner and other concerned. Since such complaints or notice thereof are not on record, it would not be proper to make any observations in that behalf. Suffice it to state that, atleast before this court no complaints against the petitioner or the School Board so also with regard to its functioning have been produced.

7. Despite all this, now that the order under challenge has been acted upon and the Commissioner of Nasik Municipal Corporation having taken charge on 1.11.2007, it would not be proper to restore the management and administration back to respondent no.4 or to the petitioner. In any event, fresh elections are held and the elected members are in office. However, the composition and constitution of the Elected Board is not complete on account of the State not nominating the two nominees. This much is enough to comment for the State’s anxiety to encourage primary

education. If the State does not have time to constitute the School Board by appointing its own nominees, then the very purpose of primary education being granted as provided therein and the constitutional Mandate under Article 21 A is defeated. In such circumstances, and when no explanation is coming from the State for not appointing nominees for more than five months, interest of justice would be subserved, if the State is granted two weeks time to appoint/nominate its nominees on the 4th Respondent board. Upon the nominees being appointed, this Municipal School Board to enter in office and take over the administration in accordance with the Act and Rules through its authorised officers. Learned Counsel appearing for the Municipal Commissioner of Nasik Municipal Corporation, on instructions, makes a statement that on the State appointing nominees within a period of eight weeks as above, within four weeks thereafter, the Municipal Commissioner shall hand over charge to the School Board in accordance with the Act and Rules.

8. Needless to state that the State Government to

take all steps while making the nominations including intimating them through the Official Gazette within the period stipulated above. Until, the School Board takes over the affairs in accordance with the Act and the Rules, the Municipal Commissioner will carry on day to day administration and not take any major policy decisions. Petition disposed off. No order as to costs.

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